IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITIONS NO.164/2002 & 165/2002

Sesa Goa Limited,
a Company incorporated under the
Companies Act, 1956 and having
its registered Office at
Sesa Ghor, 20 EDC Complex,
Patto, Panaji, Goa. ..... Petitioner.

V/s.

1. The Commissioner of Sales Tax,
Government of Goa,
Panaji, Goa.

2. The State of Goa,
(through the Chief Secretary)
to the Government of Goa,
having Office at Secretariat,
Panaji, Goa.) ..... Respondents.

Mr. S.K. Kakodkar, Sr. Advocate with Mr. Joel D'Souza, Advocate for the petitioner.

Mr. V.P. Thali, Addl. Advocate General with Ms. S. Linhares, Addl. Govt. Advocate for the respondents.

CORAM : V.C. DAGA &
P.V. HARDAS, J.J.

DATED : 10TH JUNE, 2002.

ORAL JUDGMENT : (Per V.C.DAGA, J.)

Rule. Respondents waive service. Heard finally by consent of parties. Parties were also given opportunity to circulate their written submissions in support of their oral submissions. In these petitions, the parties are same, issues raised herein are identical and can be disposed of by common Judgment, as such, both petitions were heard together.

FACTUAL MATRIX

Factual matrix, in both petitions, lies in a narrow compass and it is thus :

2. The petitioner is a a mining company engaged in operation of extraction, processing and export of mineral ore from its various mines located in Goa. It also deals with resale of scrap, by-products, oils and lubricants and motor vehicles spares including tyres and tubes etc, required for transporting minerals. The petitioner is also a registered small scale industrial unit (SSI unit) engaged in the business of manufacturing barges at Sirsaim, Goa.

3. The first writ petition being W.P. No.164/2002, is directed against the notice bearing No.CST/ADM/11/Suo-Moto/01-02/02 dated 1.4.2002 issued by the Commissioner of Sales Tax, Government of Goa proposing to revise the assessment orders passed by the Sales Tax Officer on 31.3.2001, 17.8.2001 and 25.3.2002 relating to the sales of barges (manufactured by the petitioner) for the assessment years 1996-97 (under Local and Central Act), 1997-98 (under Local Act) and 1998-99 (under Local Act) respectively on the ground that the petitioner's claim for exempting the said sale has been wrongly allowed holding it to be covered by Entry No.68

of the Second Schedule appended to the Goa Sales Tax Act, 1964 ("the said Act" for short).

4. The petitioner, after receipt of show cause notice, by letter dated 2.5.2002, requested the Commissioner to furnish reasons, if any, recorded by him for proposing to revise the assessment orders. The Commissioner by letter dated 10.5.2002, furnished the following reasons :

> "It is noticed from the records that the Registration Certificate as SSI granted to you by the Directorate of Industries for barge manufacturing unit is a conditional one as the same is subject to the condition that the unit is not entitled for any type of special assistance under the Government's SSI Programme. The Directorate of Industries has also confirmed vide their letter No.1/67/87/CST/Cert/DIM/133 dated 13.11.95 that your nit is a not entitled for any type of special assistance under Government's SSI Programme including sales tax exemption.",

5. In the course of assessment of petitioner's turnover for the year 1986-87, the Sales Tax Officer by his letter dated 7.2.1991 had invited petitioner's

objection to his proposal to refuse exemption from sale tax for sale of barges under the said entry 68 on the ground that the Directorate of Industries had imposed a condition in the Certificate of Registration as a Small Scale Industry that the said unit shall not be entitled to the special assistance under Government's SSI Programme. The petitioner filed his objections under letter dated February 25, 1991. After considering the petitioner's objections the Sale Tax Officer dropped his proposal but disallowed exemption on a different ground, namely; that the petitioner's unit had gone into production before 1.7.1983, the date on which the said Entry 68 was amended.

6. The petitioner's appeal from the said assessment order was dismissed by the Assistant Commissioner of Sales Tax by order dated 19th September, 1991. The Assistant Commissioner did not dispute the Sales Tax Officer's finding that Sales Tax exemption was not in the nature of special assistance under the Government's SSI Programme. On Second Appeal, the Administrative Tribunal, by order dated 24.7.1995 held that the petitioner was entitled to exemption for sale of barges under the said entry 68 as it stood before its amendment on 1.7.1983 and found that the Government was disabled from depriving the petitioner of the said benefit on the touch stone of doctrine of promissory

estoppel, and allowed the appeal. The acceptance of the Petitioner's contention that the petitioner's certificate of registration as Small Scale Industry did not disqualify the petitioner for exemption in respect of sale of barges under the said entry 68 was not disputed by the Sales Tax Department.

7. The petitioner states that for the assessment years 1987-88 to 1990-91, the Sales Tax Officer disallowed the claim for exemption in respect of sale of barges under the said entry 68 on the same ground on which it was refused for the year 1986-87. The petitioner appealed from the said assessment orders to the Assistant Commissioner, who by his order dated 28.9.1996 dismissed the appeal denying exemption under the said entry 68 holding that the petitioner's certificate of registration as Small Scale Industry was conditional as such, the petitioner's barge manufacturing unit could not be considered as a SSI unit under the said entry 68. The petitioner, being aggrieved by the said order, preferred second appeal to the Administrative Tribunal, which is still pending for final adjudication.

8. For the assessment years 1992-93 to 1995-96 the Sales Tax Officer refused exemption in respect of sale of barges relying on the order of the Assistant Commissioner of Sales Tax dated 28.9.1996. However the

successor Assistant Commissioner of Sales Tax disagreed with his predecessor and allowed all the appeals holding; inter alia; that the petitioner's certificate of registration as Small Scale Industry did not disqualify it for Sales Tax exemption, as the special assistance envisaged in the Government of India's SSI Programme did not embrace exemption under the said entry 68. Now the Commissioner is seeking to revise the assessment orders passed by the Sales Tax Officer for the years 1996-97 to 1998-99 allowing exemption in respect of sales of barges under the said entry 68 relying on the orders of the Assistant Commissioners of Sales Tax in appeal for the years 1992-93 to 1995-96. These orders of the Commissioner seeking to revise the orders passed by the Assistant Commissioner, are the subject matter of challenge in the second writ petition being W.P.No.165/2002.

9. The petitioner seeks to prohibit the continuance of proceedings initiated by the Commissioner of Sales Tax by the impugned notices proposing to revise the orders passed by the Assistant Commissioner of Sales Tax in appeals (WP. No.165/2002) and the assessments made by the Sales Tax Officer relying upon the orders of the Asst. Commissioner of Sales Tax (WP. No.164/2002).

A R G U M E N T S :

10. The petitioner contends that in seeking to revise the said orders, the Commissioner has contravened the conditions and transgressed the limits, express and implied, upon which the power to revise is predicated under Section 27(3) of the Goa Sales Tax Act, 1964 which reads as follows :

"Section 27, Appeal, revision and review –

(1) ...

(2) ...

(2A) ...

(2B) ...

(2C) ...

(3) Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Commissioner upon application or of his own motion may revise any assessment made or order passed under this Act or the rules made thereunder by a person appointed under Section 3 to assist him.

Provided that before rejecting any application for the revision of any such order the Commissioner shall consider it and shall record reasons for such rejection :

Provided further that no application for revision shall lie to the Commissioner in respect of any assessment if an appeal lies under sub-section (1) to the prescribed authority in respect of such assessment. "

11. The learned Counsel for the Petitioner submits that the Commissioner acquires jurisdiction to revise upon "recording of reasons in writing". This requirement is to prevent invocation of revisional power for extraneous or collateral reasons and for a purpose alien to the conferral of power. The recording of reasons in writing ensures that the power is not invoked for wrong reasons or for reasons which do not bear logical or legal scrutiny. In his submission, there is nothing like unfettered discretion in public law. When it is said that something is to be done within discretion of the authorities that something is required to be done in accordance with the rules of reason and justice, not according to private opinion. Exercise of power must not be arbitrary, vague and on fanciful grounds, but according to law. It must be exercised within the limit to which an honest man competent to discharge duties of his office ought to confine himself. He submits that section 27(3) of the Act does not lay down in which circumstances the revisional jurisdiction is to be invoked and therefore, in absence of guidelines it ought

to be read subject to the foregoing limitations.

12. The petitioner contends that on a true and proper construction of the provision of section 27 of the Act the power of revision under sub-section (3) is not available to the Commissioner for the following reasons :

(i) from an order passed in appeal (WP 165/2002); as the revenue has the right of second appeal to the Administrative Tribunal from order of the ACST under sub-section (24) of Section 27; especially when the reasons (grounds) on which revision is proposed are open to contest in appeal before the hierarchical superior appellate authority namely, the Administrative Tribunal.

(ii) In absence of any express period of limitation, providing for exercise of powers, it ought to be revised within a reasonable period i.e. sixty days, it being period of limitation provided for appeal. The said period be read as reasonable period for invoking revisional jurisdiction.

13. The learned Counsel for the petitioner submitted that the High Court while exercising

writ jurisdiction under Article 226 of the Constitution is entitled to examine on its own, whether the conditions upon which the exercise of power conferred by law is predicated are satisfied or whether there are other implied limitations upon the exercise of such power. Upon such examination; if it finds that they are not satisfied or that there are other limitations on exercise of power then this Court should issue a writ in nature of prohibition restraining the authorities from invoking and/or continuing with the proceeding initiated in exercise of such power, holding it to be without jurisdiction. He brought to our notice that in Income Tax Law it has been so held in connection with the power to re-assess predicated upon "reason to believe' that income has escaped assessment. In his submission, the Supreme Court has held that the reasons to believe that income has escaped assessment furnished by the ITO can be examined by High Court under Article 226 and, if found bad, the High Court can prohibit the ITO from proceeding with reassessment. Reliance is placed on Calcutta Discount Co. Ltd., v. Income-tax Officer, Companies District I, Calcutta and another, A.I.R. 1961 SC 372. M/s. East India Commercial Co. Ltd., Calcutta and another v. Collector of Customs, Calcutta, A.I.R. 1962 S.C. 1893; and Sha M. Hastimal and Co. and others V/s. Deputy Commissioner of Commercial Taxes, (1989) 72 STC 308.

14. In the submission of the petitioner, under Section 27(3), the Commissioner can invoke revisional power only for good reasons which can bear legal and logical scrutiny. If the reasons given are bad, the Commissioner cannot clutch at the jurisdiction. The next submission is that upon request to furnish reasons recorded, the Commissioner disclosed vide his reply dated 10.5.2002 that his conclusion was based on two grounds, namely;

(a) that the registration certificate as SSI (Small Scale Industry) granted to the petitioner is a conditional one as the same is subject to the condition that the unit is not entitled to any type of special assistance under Government's SSI Programme; and, (b) the Directorate of Industries has also confirmed vide its letter No.1/67/87/CST/Cert/ DIM/133 dated 13.11.1995 that the petitioner's unit is not entitled to any type of special assistance under the Government's SSI programme including Sales Tax exemption, both the reasons are bad in law and therefore, cannot justify the invocation of suo motu revisional power by the Commissioner under Section 27(3).

15. The petitioner while challenging the constitutionality of Section 27(3), submitted that if the interpretation and construction of Section 27 as

canvassed hereinabove, is not accepted and the Commissioner under sub-Section (3) is held to have unlimited, unfettered and uncanalised discretionary powers, then the said Section will be exposed to the vice of Article 14 of the constitution and such power would have to be treated as unreasonable, arbitrary, oppressive and void. He points out that no time limit within which the power can be exercised has been prescribed. If reasonable time can be read into the provision; what length of time can be considered reasonable will itself be an arbitrary decision left to the sweet will of the authorities. The Power is not made conditional; upon the order sought to be revised being erroneous in law and prejudicial to the interest of the revenue, as made in other fiscal laws. He submits that sub-Section (3) of Section 27 is, therefore, liable to be struck down. On the aforesaid backdrop of the submissions, the petitioner is seeking to prohibit the respondents from proceeding with the impugned notices and the proceedings initiated thereunder.

PER CONTRA

16. The learned Addl. Advocate General Shri V.P. Thali has raised a preliminary objection to the maintainability of the writ petitions on the ground that show cause notices are not open to challenge in the suit

petitions as laid down by the Supreme Court in various decisions, one of such decisions sought to be relied upon is Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd., and ors. A.I.R. 1985 SC 330.

17. In his submission, the jurisdiction of the Commissioner is no where circumscribed by any other limitation or by the fact that the second appeal is available to the tribunal against such an order under Section (2A). According to him, Section 27(3) does not say that the revisional powers are subject to other provisions of Section 27 and, more particularly, Section 27(2A). He, therefore, submits that the contention of the petitioner that an appellate order is not open to revision as there is second appeal provided under Section 27(2A) can not be accepted. Relying upon the case of State of Maharashtra v. Nanded Parbhani Z.L.B.M.V. Operator Sangh (2000) 2 SCC 69, he submitted that it is well settled that when language of the provision is clear, it has to be given effect to instead of resorting to a construction which requires for its support any addition or rejection of words.

18. The learned Addl. Advocate General next submitted that similarly, the Supreme Court in Union of India v. Deovki Nandan Agarwal, (1992 Supp. (1) SCC

323) to contend that: " It is not the duty of the court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. He submits that the Court can not rewrite, recast or reframe the legislation for the very good reason that it ha no power to legislate.

19. Learned Addl. Advocate General then submitted that in the case of S.B. Gubaksh Singh v. U.O.I. ((1976) 2 SCC 181, one of the orders challenged was the revisional order of the Commissioner by which the Commissioner had revised the appellate orders. Therefore, he contends that there is nothing in the Act which bars the revision of an appellate order.

20. As regards W.P.No.164/2002, he submitted that the orders sought to be revised are passed by the Sales Tax Officer which are the assessment orders made under Section 17 of the Goa Sales Tax Act. The Sales Tax Officer is a person who assist the Commissioner as appointed under Section 3(2) (aa) of the Act, as such the contention advanced in this behalf needs rejection.

21. He further submitted that the next requirement for exercising jurisdiction under Section 27(3) is that the order of the Commissioner revising the

assessment should be "for reasons to be recorded in writing". In short, he submitted that the reasons to be recorded in writing are required to be recorded by the Commissioner in his order to be passed under Section 27(3). It is not the requirement required to be observed while issuing a notice for revising the order.

22. Learned Addl. Advocate General while replying to the submission advanced by the petitioner that the requirement of "recording and communicating reasons in writing, has to be followed while issuing notice to revise, he submitted that such requirement cannot be read in the section. Alternatively, he submitted looking to the text of the impugned notices, the said requirement has been fulfilled, the Commissioner in the notices dated 1.4.2002 (both the writ petitions) has given reasons in writing by stating :

> "Your claim for exempting the sale of Barges manufactured by you have been wrongly allowed as being covered by entry No.68 of second schedule appended to the said Act"

He further submitted that the Commissioner has also disclosed two reasons in his letter dated 10.5.2001, namely :

(a) exemption vide entry 68 of second schedule appended to the Goa Sales Tax Act has been wrongly allowed

(b) registration certificate as SSI granted to the petitioner by the Directorate of Industries for being manufacturing unit is a conditional one as the same is subject to the condition that the unit is not entitled for any type of special assistance under Government's SSI programme.

23. Learned Addl. Advocate General also sought to answer the contentions raised by the petitioner on merits and tried to justify the impugned action. He contended that even on merits, the facts would justify that petitioner is not entitled for exemption under entry 68 of Second Schedule of the Act. He took us through the assessment orders and entry 68 as amended from time to time including the amendment introduced with effect from 1.4.1992. He contended that as per said entry 68, following are the requirements :

(a) The small scale industry must have been set up on or after 1.7.1983;

(b) Production must have been started on or

after 1.7.1983; and

(c) The sale of the goods manufactured must have been on or after 1.7.1983.

He urged that in the present case, the petitioner's industry though registered on 5.3.1985 had been admittedly set up much before 1.7.1983. Therefore, on this count alone exemption under the said entry is not available for the petitioner. In order to substantiate this submission, he placed reliance on SSI registration Certificate and the date of commencement of the production by the petitioner's industry mentioned therein as May, 1982, much before 1.7.1983. He also contended that the certificate in respect of the petitioner's industry as SSI is conditional one;inasmuch as, the registration certificate itself shows that the unit is not entitled for any special assistance under the Government SSI Programme. He also placed reliance on the communication issued by the Directorate of Industries, the author of the registration certificate, who himself has reiterated and clarified vide his letter dated 13.11.1995 that the unit was not entitled for any type of special assistance under Government's SSI programme which included exemption under Sales-tax legislation.

24. Learned Addl. Advocate General submitted

that the reasons sought to be recorded are valid reasons. He, however, submitted that this Court while deciding these petitions should not dwell on merits of the matter as the same would lie within the jurisdiction of the revising authority. He made it clear that the submissions in this behalf were made not to establish merits of the matter, but to demonstrate prima facie that the reasons are valid and good based on the facts of the case and could not be said to be irrelevant, perverse or untenable in the eye of law. The learned Addl. Advocate General further submitted that the disputed facts cannot be gone into in these writ petitions and, therefore, challenge to the notices on merits at this stage of the petitions is unwarranted.

25. As regards the validity of Section 27(3) is concerned, he tried to meet the first argument of the petitioner that as there is no time limit prescribed for exercising revisional jurisdiction, as such, the same is arbitrary and violative of Article 14 of the Constitution of India. He made two submissions to meet this argument:

(a) While exercising suo motu revisional power, if no time limit is prescribed by statute, it cannot be said that limitation of reasonable time is implied in the statute.

(b) Alternatively, if no such time limit is fixed, limitation of reasonable time can always be read as implied condition.

26. He submitted that the Supreme Court while analysing Section 31 (Revisional Jurisdiction) of Bombay Sales Tax Act 1953, in the case of Swastik Oil Mills Ltd., v. H.B. Munshi, Deputy Commissioner of Sales Tax, Bombay, A.I.R. 1968 S.C. 843, has held that when no time limit for suo motu revision is prescribed it cannot be said that limitation of reasonable time within which the revisional powers are to be exercised must be implied in the statute.

27. He further submitted that in the Sales Tax legislations of various States; where similar power of revision is provided for, the time limit of either 3 to 4 years is found to be prescribed. In case of Bombay Sales Tax Act, 1959, itself under Section 57 a similar and identical provision of revision is provided for and the time limit of three years has been prescribed under the proviso to Section 57. Relying upon the case of State of Orissa and ors. v. Brundaban Sharma (1995 Suppl.(3) SCC (pr.15 and 16), he submitted that in the said case the supreme Court has held that whenever the power is given under the statute, but no time limit is prescribed, the power has to be exercised within reasonable time. What

would be the reasonable period of time would depend upon particular statute. He, therefore, submitted that there is no substance in the submission advanced in this behalf and the petitions are liable to be dismissed with costs.

I S S U E S :

28. On the basis of the foregoing submissions, the crucial questions which arise in these petitions are petitions are:

(1) Whether Section 27(3) is ultra vires the provision of Article 14 of the Constitution for want of time limit prescribed for exercising the revisional jurisdiction ?

(2) Whether the suo motu notice issued by the Commissioner of Sales Tax under Section 27(3) of the Goa Sales Tax Act to revise the orders passed by the Assistant Commissioner of Sales Tax dated 27.6.2000 and 20.9.2001 and the orders of Sales Tax Officer dated 31.3.2001, 17.8.2001 and 25.3.2002 are without jurisdiction ?

F I N D I N G S

29. The first challenge relates to the constitutional validity of sub-Section (3) of Section 27 of the said Act on the touchstone of Article 14 of the Constitution. It is well settled law that there is a presumption of constitutionality of the provision in the statute. The Courts ought not to interpret the statutory provision, unless compelled by their language, in such a manner as would involve its unconstitutionality, since the legislature is presumed to enact law which does not violate constitutional provisions. In B. Banerjee v. Anita Pan, [(1975) 2 SCR 774, 787:(1975) 1 SCC 166, 174, 175, 179], the Supreme Court, speaking through V.R. Krishna Iyer, J. reiterated the ratio of Ram Krishna Dalmia v. Tendolkar, A.I.R. 1958 SC. 358, as under :

> " there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principle." and "that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds." it was emphasised that : "Judges act not by hunch but on hard

> facts properly brought on record and sufficiently strong to rebuff the initial presumption of constitutionality of legislation. Nor is the court a third Chamber of the House to weigh whether it should ...draft the clause differently."

Referring, inter alia, to the decision of the Supreme Court in State of Bombay v. R.M.D. Chamarbaugwala (1957) SCR 874, 920: A.I.R. 1957 SC 699) and Seervali's Constitutional Law of India, Vol.I, P.54 it was recalled :

> " Some Courts have gone to the extent of holding that there is a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt; and to doubt the constitutionality of a law is to resolve it in favour of its validity."

Similar view was taken by a Bench of seven learned Judges of the Supreme Court in Pathumma v. State of Kerala (1978) 2 SCR 537:(1978) 2 SCC 1].

30. Interpretation of a provision or statute is not a mere exercise in semantics but an attempt to find

out the meaning of the legislation from the words used, understand the context and the purpose of the expressions used and then to construe the expressions in its proper perspective. Primarily, if the words are intelligible and can be given full meaning, courts should not cut down their amplitude. Secondly, the purpose or object of the conferment of the power must be borne in mind.

31. The interpretation, which is an interpretation according to the intent, departs from the letter of the law and goes behind the language used in the statute for the ascertainment of its meaning and is only adhered to when grammatical interpretation leads to some absurdity or inconsistency. In such cases, it is the duty of the Court to discover and give effect to the true intention of the legislature.

32. In order to ascertain the exact meaning of what the Legislature has actually said, Denning, L.J. went so far as to observe that "we sit here to find out the intention of Parliament and of Ministers and carry it out and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis." [Magor & St. Mellous Rural District Council v. Newport Corporation, (1950) 2 All E.R. 1226, 1236]

33. The golden rule of interpretation is that a construction which creates anomalous situations, should, if possible, be avoided. Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the legislature, the Court might modify the language used by the legislature so as to achieve the intention of the legislature and produce a rational construction. The task of interpretation of a statutory provision is an attempt to discover the intention of the legislature from the language used. It is necessary to remember that language is at best an imperfect instrument for the expression of human intention. It is well to remember the warning administered by Judge Learned Hand that one should not make a fortress out of dictionary but remember that statutes always have some purpose or object to accomplish and sympathetic and imaginative discovery is the surest guide to their meaning as observed by the Supreme Court in Commissioner of Income-tax Bangalore v. J.H. Gotla, A.I.R. 1985 SC 1698.

In Seaford Court Estates Ltd. v. Asher, (1949)2 All E.R. 135, 164), Lord Denning L.J. said :

> "When a defect appears, a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of

> finding the intention of Parliament and then he must supplement the written word so as to give 'force and life' to the intention of the Legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they should have straightened it out ? He must then do as they would have done. A judge must not alter the material of which the Act is woven but he can and should iron out the creases."

34. The next question which arises for consideration is whether, as urged by learned Addl. Advocate General, in absence of the words "reasonable time" can we read down the said words to mean that the said section prescribes limitation of reasonable time within which revisional powers are to be exercised. In the case of M/s. Girdhari Lal & Sons v. Balbir Nath Mathur and ors. (A.I.R. 1986 S.C. 1499), the Apex Court ruled that in order to save the provision from being declared unconstitutional, the section can be read down. The principle of interpretation of statutes are discussed and considered at length in para (38) of Michael D'Souza v. Ganesh Gaonkar [(1995(2) G.L.T.367). The Apex Court in another Judgment in the case of Sunil Batra v. Delhi Administration (A.I.R. 1980 SC 1579)

observed in para 50 of the Judgment that new legislation is best solution, but when law makers take for too long for social patience to suffer, Courts have to make do with interpretation and carve on wood and sculpt on stone ready at hand and not wait for far away marble.

35. In appreciating the rival contentions on the question whether sub-Section (3) of Section 27 can be read down so as to save it being invalidated on the ground of unconstitutionality, it would be useful to notice some of the judgments of the Supreme Court, so as to have an idea in which category of cases or which expressions have been read in order to give force and life to the intention of the Legislature or in order to save the provision from being rendered invalid.

36. In R.M.D. Chamarbaugwalla & Ors. v. Union of India (AIR 1957 SC 628), the question of interpretation of the definition of the expression 'prize Competition' defined in Section 2(d) of the Prize Competition Act was under consideration of the Supreme Court. The said definition as worded in wide terms and there was nothing in its wording to limit it to a competition in which success does not depend to any substantial extent on skill but on chance. The Supreme Court has, however, held that looking to the object of the said Act, the definition of the expression 'prize

competition' had in view such competition as was gambling in nature and no other.

37. In Kedar Nath Singh v. State of Bihar (A.I.R. 1962 SC 955), the validity of Section 124-A of IPC which was defines an offence of what is known as sedition was under challenge on the ground that it infringed the fundamental right of freedom of expression guaranteed under Article 19(1)(a) of the Constitution. The words used in Section 124-A IPC were wider and unqualified. However, looking to the object of punishment for offence of sedition, Section 124-A was read down and was construed to mean that the words, spoken or written are seditions within the meaning of Section 124-A of IPC. When they are pernicious or have a tendency to harm public order.

38. In case of Sunil Batra v. Delhi Administration (AIR 1978 SC 1675) the question was whether a prisoner under sentence of death should be confined in a cell part from the other prisoners. The submissions made was that he should be confined in solitary confinement but it was read down to mean that he should be kept in a separate cell but one which is not away from the other cell.

39. In the case of Bangalore Water Supply v.

A. Rajappa (A.I.R. 1978 SC 548), the question was about construction of the definition of the word 'industry' in Section 2(j) of the Industrial Dispute Act. Although the definition of the expression "Industry" given in Section 2(j) of the above Act was very wide, the Supreme Court has held that looking to the object of the enactment, the said definition is not intended to cover the regal functions of the state and the said definition of the expression 'industry' was thus read down by the Supreme Court.

40. The case of the Supreme Court which is, however, closer to case in hand and which can throw more light is the case of Chief Justice of Andhra Pradesh V. L.V.A. Dikshittulu (A.I.R. 1979 S.C. 193). The question in that case was whether the cases of High Court staff and the subordinate Judiciary can be referred to the Administrative Tribunal constituted by the State of Andhra Pradesh as per the provision of Article 371-D of the Constitution. In construing the said Article 371-D of the Constitution, the Supreme Court held that the words 'Civil Service of the State' would not include the High Court staff and the subordinate Judiciary although the same words used in Article 311 of the Constitution would include them. The narrow construction was adopted by the Supreme Court because the wider construction would have encroached upon the independence of the Judiciary

enshrined under Articles 229 and 235 of the Constitution. It is thus clear from all the judgments referred to above that if the words used in the statute in general, vague or ambiguous and if it is necessary to give narrow meaning to the wider expressions used in the statute in order to give effect to the intention of the Legislature or to save the same from being rendered invalid, recourse can be had to the doctrine of reading down such wide provisions.

41. As we have pointed out hereinbefore the intention behind the exercise of revisional power can not be read to bestow uncanalized arbitrary power in favour of the revising authority. There does not appear to be any difficulty in reading down the said sub-Section. It is, therefore, necessary to save the provision in sub-Section (3) of Section 27 from being rendered invalid, they should be read down so as to read the words 'reasonable time' in the said sub-Section. Reading down of the said section would then be in keeping with the object of the act, and also would save the impugned provisions from being rendered invalid.

42. Learned Addl. Advocate General brought to our notice that the judgment of the Orissa High Court in Laxminarayan Sahu v. State of Orissa, A.I.R. 1991 Ori. 139, wherein Full Bench of the said High Court held that

even though there is no period of limitation provided in section 59(2) of Orissa Land Reforms Act, 1960, it must be exercised in a reasonable manner which impliedly stipulates that it should be in reasonable time. What would be a reasonable time so as to be immune from the attack that the power has been exercised in an unreasonable manner would depend upon the facts and circumstances of the case.

43. In State of Gujarat V. Patel Raghav Natha, (1969 2 SCC 187: (1970) 1 SCR 335, 343, Apex Court held that Section 65 itself did not indicate any length of reasonable time within which the Commissioner ought to have acted under Section 211. Under Section 65 if the Collector does not inform the applicant of his own decision on the application within a period of three months the permission applied for can be deemed to have been granted. Power under Section 211 of the Code must be exercised within reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised. On the facts in that case it was held that the Commissioner also should exercise revisional power under Section 211 within three months as the owner would spend money to construct house and hardship would ensue if belated orders were to be passed. The same ratio was reiterated in State of Orissa V. Pyrimohan Samantaray

and Mansaram V. S.P. Pathak, (1984) 1 SCC 125. The aforesaid two Judgments with one more Judgment earlier delivered by the Supreme Court in the case of State of Maharashtra v. Rattanlal, (1993) 3 SCC 326, were followed by the Supreme Court in the case of State of Orissa v. Brundaban Sharam (cited supra)

44. We therefore read down the words "within a reasonable period" and conclude that power is required to be exercised within the reasonable period. What should be the 'reasonable period', would depend upon the facts and circumstances of the each case.

45. Having read down sub-Section (3) of Section 27 of the Goa Sales Tax Act, another question which needs consideration is whether the power to revise in these cases have been exercised by the Commissioner of Sales-tax within a reasonable time ?

46. In order to answer this question let us turn to the Sales-tax Legislation of various States; wherein the time limit of either three or four years is found to be prescribed while providing for exercising similar power of revision. In the case of Bombay Sales Tax Act, 1959 itself, under Section 57, a similar and identical provision of revision is provided for and the time limit of three years has been prescribed under

proviso to Section 57 of the said Act. The Apex Court as noticed hereinabove, has held in the case of State of Orissa and ors. v. Brundaban Sharma (cited supra) that whenever the power is given under the statute, but no time limit is prescribed therefor, the power has to be exercised within a reasonable time. What will be the reasonable period of time, will depend upon a particular statute. Under Section 27(3) of the Goa Sales Tax Act, there is no time limit is prescribed for filing revision if it is to be filed by a dealer. In such event, Article 137 of Limitation Act which prescribes time limit of three years, guides the issue as to what should be the reasonable period of time for invoking revisional jurisdiction. In this regard, one may turn to the decisions of the Apex Court in the case of Kerala S.E. Board v. T.P. Kunhaliumma, A.I.R. 1977 S.C. 282 and Addl. Special Land Acquisition Officer v. Thakoredas, 1997 (11) S.C.C. 412, wherein the Apex Court had an occasion to rule that in such a case, Article 137 of Limitation Act, 1963, would apply. Considering various Sales-tax Legislations of various States where similar powers are prescribed, there is no difficulty in holding that the impugned notices are issued well within reasonable period of two years from the dates of respective orders which are sought to be revised.

47. Now turning to the submissions advanced by

the petitioner that the discretion conferred by Section 27(3) is unfettered and is not controlled by any consideration to which the revisional power is normally subjected to. The Apex Court in case of M/s. Ram Kanai Jamini Ranjan Pal Pvt. Ltd., v. Member Board of Revenue, W.Bengal, A.I.R. 1976 S.C. 1545 (paras 11, 12, 13 and 14) while affirming the observations in the case of East Asiatic Co. Ltd. v. State of Madras, A.I.R. 1956 Mad 168) held in para 13 of the Judgment thus :

> " The essence of revisional jurisdiction lies in duty of the superior Tribunal or officer entrusted with such jurisdiction to see that the subordinate Tribunal or officers keep themselves within the bounds prescribed by law and that they do what their duty requires them to do and they do it in a legal manner. This jurisdiction being one of superintendence and correct in appropriate ases, it is exercisable even suo motu as is clear from the numerous statutory provisions relating to revision found in various Acts and Regulations such as Civil Procedure Code, Criminal Procedure Code, Income Tax act, etc. The jurisdiction of suo motu revision is not cribbed and cabined or confined by conditions and qualifications. The purpose of such an

> amplitude being given suo motu revision appears to be as much to safeguard the interests of the exchequer as in the interests of the assessee. The State can never be the appellant and if there is an order against the State to its prejudice, and naturally the assessee in whose favour the order is passed does not prefer an appeal, the State would suffer unless its interest are safeguarded by the exercise of the supervisory jurisdiction as the one given to the authorities above mentioned."

48. In the decision of State of Kerala v. M.G. Abdulla and Co. (supra) relied upon by the petitioner in their arguments, does not at all support the petitioner's case inasmuch as the facts in that case were totally different and the question which arose for determination was as regards to the amplitude of the revisional power. The majority decision in that case was of Shah J. and Sikri J. who held that while exercising the revisional jurisdiction the Commissioner is not expected to restrict himself only to the record maintained by the subordinate officer but an even make an inquiry out side that record. In para 17 of its Judgment in Ram Kanai Pal's case, A.I.R. 1976 S.C. 1545, the Apex Court has affirmed the observations made in the earlier case of Swastik Oil

Mills (supra) and held as under :

> "Whenever a power is confirmed on an authority to revise an order, the authority is entitled to examine the correctness, legality and propriety of the order and to pass such suitable orders as the authority may think fit in the circumstances of the particular case before it."

49. The submission thus cannot be accepted that power given under Section 27(3) is arbitrary and that it is not controlled by any considerations or that it is unfettered or uncanalised.

ISSUE NO.2

50. Now turning to the second issue with respect to the exercise of power and legality thereof, one has to turn to Section 27(3) of the Act which prescribes only two requirements, namely :- (i) the Commissioner can revise any orders of assessment made or any order passed under the Act or the Rules; (ii) the order to be revised must have been passed by a person appointed under Section 3 to assist him. Under Section 3(2)(a) of the Act, the Assistant Commissioner of Sales-tax is one of such persons appointed to assist the

Commissioner. The order of the Assistant Sales-tax Commissioner sought to be revised suo motu is an order passed under the Act, namely passed under Section 27(2) of the Act. Therefore, both the requirements for revising the order of Assistant Commissioner of Sales-tax are satisfied and the Commissioner has jurisdiction to revise such an order. This jurisdiction is no where circumscribed by any other limitation or by the fact that the second appeal is available to the Tribunal against such an order under Section 27(2A). Section 27(3) does not say that the revisional powers are subject to other provisions of Section 27 or more particularly Section 27(2A). Therefore, the submission of the petitioner that the revision of an appellate order is not available as second appeal is provided under Section 27(2A) cannot be accepted.

51. It is well settled that when language of the provision is clear, it has to be given effect to instead of resorting to a construction which requires for its support any addition or rejection of words. In this behalf, one may turn to the Judgment of the Apex Court in the case of State of Maharashtra and ors. v. Nanded Parbhani Z.L.B.M.V. Operator Sangh (cited supra). In para 14 of the said Judgment, the Apex Court has held :

> " It is not the duty of the Court either to enlarge the scope of the legislation or the

> intention of the legislature 2when the language of the provision is plain and unambiguous. The court can not rewrite, recast or reframe the legislation for the every good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts. The Courts cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself."

52. At this juncture, it is useful to make a mention that in one of the Judgments of the Supreme Court, in the case of S.B. Gurbaksh Singh v. Union of India and ors. (1976) 2 S.C.C. 181, one of the orders challenged was the revisional order of Commissioner, by which the Commissioner had revised the appellate orders. As such the contention raised in this behalf is devoid of any substance.

53. The next basic requirement for exercising jurisdiction under Section 27(3) is that the order of the Commissioner revising the assessment should be <u>"for reasons to be recorded in writing"</u>. <u>The reasons to be recorded in writing</u> are required to be mentioned by the Commissioner in his order to be passed under Section 27(3). This is not the requirement for issuing notice. In this case, as already extracted in the opening part of

the Judgment, the reasons are recorded, in writing, by the Commissioner. Therefore, by no stretch of imagination, it can be said that the Commissioner of Sales-tax has failed to follow the mandate of Section 27(3) of the Goa Sales-tax Act. In the aforesaid backdrop, no fault can be found with the power invoked by the Commissioner. The action of the Commissioner cannot be said to be without jurisdiction.

54. The parties to these petitions no doubt addressed to us on the question of legality of the reasons and sought to develop rival contentions. However, we do not feel it necessary to dwell on the merits of the reasons, as that would not be within the province of this Court to examine reasons and the legality thereof on merits. It would be well within the jurisdiction of the authorities to consider the legality or the validity of the reasons on its own merits if they are challenged by the assesses. Since we are restricting ourselves to the legality of the notices impugned, we keep this question open for being raised before the Revisional Authority. At any rate, prima facie we do not think that the reasons sought to be recorded can be branded as perverse and arbitrary. However our observations are prima facie.

We, for the reasons recorded hereinabove,

dismiss these petitions. In the result, Rule in both the petitions stands discharged, with no order as to costs.

V.C. DAGA, J.

P.V. HARDAS, J.

ssm.